

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN LEE HARVEY,
Petitioner,
v.
PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

No. 2:23-cv-00984-DAD-CKD P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 15, 2023, this court ordered petitioner to show cause why a stay and abeyance of his habeas petition was appropriate since all of the claims raised therein had not yet been presented to the state courts. ECF No. 7. Petitioner was granted 30 days in which to file a response to the order to show cause.

In response, petitioner filed a one-page declaration requesting a 60 day stay and abeyance.¹ ECF No. 8. Liberally construed as a motion for a stay and abeyance, the motion is

¹ Petitioner is advised that this court does not set a specific time frame (e.g., 60 days) in which petitioner must exhaust all of his claims in the state court system due to the variability in case processing times that occur. Rather, if a stay and abeyance is granted, petitioner will be directed to file a status report in this court every six months describing where he has filed a state habeas petition and what result, if any, has occurred. Petitioner will be further directed to file a motion to lift the stay and abeyance within 30 days from any final decision by the California Supreme Court in his case.

procedurally defective because it does not address any of the three requirements outlined in the order to show cause that petitioner must demonstrate in order to obtain a stay and abeyance. ECF No. 7 at 3; see Rhines v. Weber, 544 U.S. 269, 277-78 (2005) (requiring a petitioner to demonstrate: (1) good cause for failing to previously exhaust the claims in state court; (2) the claims at issue potentially have merit; and, (3) diligence in pursuing relief in order to obtain a stay and abeyance). Absent this information, the court is unable to rule on petitioner's motion for a stay and abeyance. Therefore, the court denies petitioner's motion for a stay without prejudice to renewal within 30 days from the date of this order.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's motion for a stay and abeyance (ECF No. 8) is denied without prejudice to renewal within 30 days from the date of this order.
2. Any motion for a stay and abeyance filed in response to the court's order shall address: **1) why petitioner has not previously raised his habeas claims in state court; 2) why the unexhausted claims are meritorious; and, 3) how petitioner has acted diligently in seeking relief on these claims.**
3. Petitioner is further directed to submit an affidavit in support of his request to proceed in forma pauperis or the \$5.00 filing fee in order to proceed with this matter.
4. The failure to comply within the time provided will result in a recommendation that this action be dismissed without prejudice.

Dated: September 13, 2023


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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